

volatility in those prices over extended periods of time. *See also* IP Ex. 2.6 at 15. No party disagrees with this aspect. Rather, the debate centers on the use of day-ahead prices.

NewEnergy contends that day-ahead sales represent “dump sales” that are made at prices below the real value of Off-peak energy. NewEnergy Ex. 4 at 5. It also contends that an ARES could not use day-ahead purchases to serve its Off-peak load and remain in compliance with a utility’s scheduling requirements. *Id.* at 6. Neither of these arguments is accurate nor provides any basis for NewEnergy’s proposed adjustment. Furthermore, the adjustment methodology NewEnergy seeks is flawed.

First, merely labeling day-ahead sales with the pejorative “dump sales” has proven more inflammatory than illuminating. Any forward sale of energy in a period of low demand could be characterized as a “dump sale,” regardless of whether it is day-ahead or not. IP Ex. 2.6 at 16. More importantly, and regardless of the label used, the real issue in this case is how to set a market value. NewEnergy presents reasons why the day-ahead price may be lower than a longer-term price for Off-peak energy. NewEnergy Exs. 4 at 3-5 & 3 at 10-15. No doubt these reasons prove true some of the time and the day-ahead price may be lower than a longer-term price. But, there are also several reasons that the day-ahead price may be higher than a longer-term price. IP Ex. 2.6 at 15-18; ComEd Ex. 4 at 11-12. As with several other adjustments, NewEnergy seeks to justify its desire to raise market values by only telling the half of the story that suits its purpose rather than painting the complete picture. Without better evidence that day-ahead prices are in fact lower than longer-term prices on a net basis, no adjustment is warranted.¹⁶

¹⁶ Part of that evidentiary showing would have to include whether utilities (who must attempt to re-sell their energy whenever the customer leaves its system and not in well-timed periods) will be able to obtain whatever prices the adjusted values produce. Utilities attempting to sell Off-peak energy may be met with a saturated market and be unable to “dump” their excess without jeopardizing system reliability.

(continued...)

Second, nothing in the requirement that all parties use good-faith scheduling makes day-ahead pricing inappropriate. This argument was raised with respect to ComEd and therefore there is no IPC specific evidence regarding it. Nonetheless, the ComEd response is resounding: “the statement is not true and I [Mr. Naumann] simply can’t understand the statement. You can buy power in the spot market either hourly or several hours or whatever to meet your load estimate.” Tr. at 84-85. *See generally* ComEd Ex. 1.

Finally, the methodology proposed by NewEnergy is flawed. NewEnergy seeks to include a capacity factor for Off-peak power based on broker sheets. NewEnergy Ex. 4 at 7. Such a method ignores the fact that “[c]apacity values are primarily embedded within the high demand, high volatility periods” more typical of On-peak periods. IP Ex. 2.6 at 18. Any attempt to alter this market dynamic “would be countered by other willing sellers” who would not seek a capacity adder. *Id.* Furthermore, NewEnergy has not described the process for implementing its proposal: how would broker sheet prices be obtained and from which brokers; who would verify that higher or lower prices were not obtainable from other sources; what if no brokers were willing to permit their sheets to be used for this process or to be audited, ... Such a nebulous concept cannot be implemented without causing more problems and disagreements than it resolves.

Because NewEnergy’s Off-peak adjustment is based on two inaccurate arguments, seeks to add a component that is not appropriate for Off-peak pricing and has not been described with the particularity needed to be incorporated into a tariff, it must be rejected.

IP Ex. 2.6 at 17. Section 16-112(a) does not merely look at the buyer’s side of the market, it also looks at the utility’s ability to sell at the price set.

G. Additional Load Shaping for Off-Peak Prices Is Not Appropriate in Illinois Power's Case.

Once the data are obtained from the data sources, Illinois Power's intent was not to change (from the method currently used on the NFF values) how that data is then adjusted to reach the market values used for TC and PPO purposes. IP Ex. 3.1 at 6-7. Thus, the PJM load shaping adjustment known as the "Zuraski adjustment," that IPC currently performs only on the On-peak NFF values, would continue to be performed only on the On-peak MVI values. NewEnergy would require IPC to extend the Zuraski adjustment to Off-peak values as well. NewEnergy Ex. 4 at 8; NewEnergy Ex. 2 at 11. In doing so, NewEnergy misunderstands the scope of what it is requesting.

First, it must be recognized that "IP is using the same methodology that I [Mr. Zuraski] proposed in the delivery service cases. This IP methodology is still reasonable." ICC Staff Ex. 3.0 at 33. Although Staff would prefer IPC to adopt the refinement of shaping all hours in the year, Mr. Zuraski "would not necessarily make that a pre-condition for approving the IP market index tariff." *Id.* In later rounds of testimony, IPC explained why the extension of the PJM shaping is not appropriate for it.

To extend the PJM adjustment to all 8760 hours in the year is not simply a calculation exercise. Rather, IPC "uses the PJM shaped prices to not only calculate customer TC amounts, but also to calculate customer bills under Rider PPO. This is an entirely different situation than for ComEd and Ameren." IP Ex. 3.7 at 2.¹⁷ Indeed, using the same values for both purposes is required by the PUA: PPO purchases by an eligible customer must be set using the market values "used by the electric utility to calculate the customer's transition charges ..." § 16-110(b).

¹⁷ Even NewEnergy's Dr. O'Connor recognized that changing IPC's load shaping adjustment would not bring IPC's, Ameren's and ComEd's adjustments into uniformity. Tr. 579 (10/03/00).

To extend the PJM shaping for TC purposes means an extension for PPO pricing purposes as well. In addition to the legal requirement for this, such a matching of data “insures that the savings a customer expects are realized.” IP Ex. 3.7 at 2. But, if all hours are shaped and used, the customer’s monthly PPO bill could end up with about 730 hours of market prices multiplied by the hourly usage,¹⁸ adding additional complexity for customers when they attempt to understand their bills. *Id.* at 3. This would also require a “substantial” amount of systems re-work by IPC for little value since the Off-peak prices are not that volatile in the first place. *Id.*

Given the complexity of what NewEnergy is requesting, and the limited value (as even Staff recognizes) to be obtained, IPC should not be required to change its PJM adjustment.

H. Other—Reserved

Although at this time Illinois Power has no other issues to discuss, it reserves the right to reply to any additional issues raised by other parties in their opening briefs.

IV. The Time Period and Notice Related Issues Raised By Various Parties Do Not Warrant Rejecting IPC’s Proposal to Use More Frequent Updates Based on More Recent Data.

A. IPC’s Monthly Updates are the Proper Solution for It (Periods A/B v. 12 Month Rolling Average).

IPC’s proposal calls for the following process to be used to collect the raw data: data are collected on the last 5 business days of the preceding month and the first 5 business days of the current month. Once the raw data are collected: market values and associated TCs are published on IPC’s website on the 8th Business Day of each month with those values effective for those customers who either begin delivery services during the following billing month or for those customers whose anniversaries fall during the following billing month. Once selected, however, the customer’s market value and TC (except for non-market value charge changes) remain

¹⁸ 8760 hours divided by 12 months equals 730 hours per month.

constant for the subsequent 12-month period. Thus, while a new set of values are published for the next month, they apply to the next wave of customers and do not change the values used by customers who have a different anniversary month. *See generally* IP Ex. 3.1 at 6-9.

This process has been attacked by some and supported by others. *Compare* Nicor Exs. 1 & 2 (supporting IPC's basic approach) *with* NewEnergy Exs. 1 & 2; CILCO Ex. 3 (each attacking IPC's basic approach).¹⁹ Essentially, some marketers believe that they and their customers need more time between the date a final market value is published and the last date a customer has for selecting delivery services. Initially, we must make sure no one is misled by an unfortunate cross-examination "subject to check" hypothetical that implied that certain customers would have as few as three days in which to make a decision. *See* Tr. 290-301 (10/02/00). This was inaccurate and, in fact, the hypothetical customer at issue would have had 11 days in which to finalize its decision. Tr. 620 (10/03/00). More generally, for the year 2000, a customer whose meter read date is early in the cycle (for example, a customer with a Bill Cycle 2 read date) would have at least 8 days (and, in some months, as many as 16 days) between the publication date and the last day for selecting choice. IP Ex. 3 at 3-4. Of course, those customers with later reading dates will have even more time.

Furthermore, IPC's method of then keeping the market values constant for an entire 12-month period for those customers who select choice in any given month is an improvement over the NFF and the A/B method for all (but a very few customers for whom the methods are equivalent due to anniversary date coincidence). Under the NFF process, because market values

¹⁹ We reiterate that while we firmly believe our process is the best approach proposed by any party in this case, we do not intend the following discussion to be used as a basis for requiring either ComEd or Ameren to use our methodology. Rather, the following is intended to demonstrate why the IPC method should be approved as to it.

change every January 1 for every customer, only those who have anniversary dates of January 1 have a pre-set market value for an entire 12-month period. Similarly, for the period A/B method, because market values change every June 1 for every customer, only those who have an anniversary date of June 1 have a pre-set market value for an entire 12-month period.

One of the criticisms of the NFF process is that it uses stale data because the contacts reviewed are months and possibly years old. *See* p. 15, above. Both the IPC method and the period A/B method use more recent data. But, the IPC method is superior in that our method “calculates each and every period’s TC closer to the effective date of the TC than the A/B method would.” IP Ex. 2.8 at 10. The difference is significant: under our method, the data is on average only slightly more than a month old whereas on average the period A/B data is almost 4 months old for period A and almost 7 months old for period B. *Id.* As the amount of time between data collection and effective dates lengthens, customers and ARES receive a free option at the utility’s expense (an option that no party denies yet for which no party is willing to compensate IPC) and gaming opportunities become more significant. *See id.* Furthermore, competition may be hindered if prices move substantially during this period. Even a one-month additional lag (as suggested by Unicom, Unicom Ex. 1 at 8) can see prices move substantially (*see* IP Ex. 2.6 at 29 (noting about a 45 mil/kWh shift in prices from the beginning of May 2000 to the end of May)). Any greater lag could see prices move even more.

Furthermore, IPC has trimmed the time it has to turn the raw data into final market values and TCs substantially. *Compare* IPC’s original June 5, 2000 filing (in which values were not published until the 15th day of each month) *with* IP Ex. 2.2 (changing the publication date to the 8th business day). Three business days (data is fully available to IP on the 5th business day and values are published on the 8th business day) is a relatively short period of time for the amount

and scope of work to be done but in an effort to ensure that customers and ARES have the data as quickly as possible, we have shortened our time to perform the necessary calculations.

All this said, arguments that IPC's proposal does not provide customers and ARES with sufficient time miss the mark in several ways. First, any ARES or customer can follow the market trends and have a fairly good idea of what the next month's market values, and hence TCs, will be before they are actually published. Indeed, under IPC's proposal all values except the very volatile On-peak component are calculated only annually, allowing all participants to know those components well in advance of each month. As for the volatile On-peak component, any market participant can estimate the new market values by (1) knowing the value published last month by IPC (unlike the period A/B method that only publishes values twice per year); and (2) using widely-available sources (including a published market survey used in part to calculate IPC's market values) to determine if prices are rising, falling or staying the same. This is little different from the way consumers choose a mortgage rate. *See* IP Ex. 3.6 at 4. If residential customers can and do make decisions using this "fairly easy and effective strategy" (*id.*) for something as large as their home mortgage, it is hard to understand why a similar process is not even more acceptable for electricity purchases. Furthermore, to the extent more sophisticated analysis is required for the largest customers, there can be no doubt that sophisticated consultants are available to fill the niche. *See* Tr. 728 & 734 (10/04/00).

Second, the debate over whether the decision window is long enough proceeds from a false assumption: that customers can only act when they have perfect knowledge of all prices. This is simply not true and is best illustrated by one of the most strident critics of IPC's method. CILCO signed a Master Power Purchase Agreement for supply to retail customers (the schools in the Illinois Electric Consortium) on August 1, 2000. Tr. 1100-01. Yet, the NFF report including

values for 2001 (the equivalent of the market values that ARES contend need to be known before they can make a decision) was not published until August 15, 2000.²⁰ If this State's schools can make electric purchasing decisions (or an ARES can on their behalf) without any idea of the market value, then surely a customer can do so when the values are known in advance of the time for making a decision.

Finally, it is important that, in deciding this issue, the Commission understands why ARES and customers want more time:

Ultimately, the timing issue is one of risk management. As we are all aware, one of the greatest benefits of an active market is that those who are willing to accept risk, can take on the risk of those who are less willing to do so - for a price. What [CILCO] and others are asking here by suggesting that IP should update its market values annually, is to have IP assume an inordinate share of the risk of price changes - but no one has suggested that IP should be compensated in the form of an option premium for doing so.

IP Ex. 2.6 at 13.

Illinois Power is in favor of creating a truly competitive market for electricity in Illinois. In doing so, all parties must become more accustomed to acting as they do in other competitive markets, where all parties bear a share of the risk, rather than seeking to place the costs on the incumbent utility and the benefits on the new entrants.

For the foregoing reasons, IPC's 12-month method should be adopted.

B. IPC's Revised Notice Period for PPO Customers is Appropriate (Decision Window).

Given IPC's original process for handling requests to take PPO service, some parties raised a concern about the decision window available to such customers in light of the MVI

²⁰ The ability to make a decision without knowledge of the final market value is even more pointed in the case of the NFF values for which there are no trends to follow and which uses a black box process for publishing final values.

process discussed above. As with other aspects of IPC's proposal, we carefully considered these concerns. After doing so, we determined that we are "willing to modify the 30-day PPO requirement to be the lesser of either 30 days or the length of time between the 10th business day of a month and the scheduled meter read date for the next billing cycle month." IP Ex. 3.6 at 5 (as amended at Tr. 617 (10/03/00)). Given this modification, we believe this is no longer an issue, but reserve the right to reply to any arguments made by other parties in their opening briefs.

C. As Discussed Above, the Notice Period for Delivery Services Customers Contained in IPC's Method Should Be Adopted (Decision Window).

We addressed the decision window above in the same section as our 12-month process. We reserve the right to reply to any arguments made by other parties in their opening briefs.

D. Other—Reserved

Although at this time Illinois Power has no other issues to discuss, it reserves the right to reply to any additional issues raised by other parties in their opening briefs.

V. **On the Only Other Issue of Substance (the Eligibility of Customers for PPO when They are Not Paying a TC), the IIEC's Position Is Contrary to the Law & Public Policy.**

A. There Do Not Appear to be Any Transitional Issues.

IPC will transition customers from the NFF values to MVI values as customers' anniversary dates roll around in 2001. For those whose anniversary dates occur prior to implementation of Rider MVI in 2001, IPC will recalculate the customer's TC on January 1, 2002 using the MVI values and then again on their anniversary date in 2002.

As far as IPC is aware no party has raised any issue with this transition process, with the exception of the PPO issue discussed in the next subsection. We reserve the right to reply to any arguments made by other parties in their opening briefs.

B. Based on the Law and Sound Policy, Illinois Power Cannot be Required to Make PPO Service Available to Customers with a Transition Charge of Zero.

Section 16-110(b) of the PUA states that PPO service is available to “a non-residential delivery customer that is paying transition charges ...” IPC’s current Rider PPO (which was approved by this Commission) incorporates this statutory eligibility requirement. IP Ex. 3.3 § 2(g). Nonetheless, the IIEC argues that we should be required to permit a customer who has a zero TC to obtain PPO service. The IIEC’s position is contrary to the law and is bad public policy. Before turning to this issue, it is important to recognize (as pointed out by the Staff in this case) that “a zero CTC implies that the average customer in the class is already getting a bargain relative to the market.” ICC Staff Ex. 3.0 at 12. And, for those with individually-calculated TCs, “each customer with a zero transition charge is getting a bargain relative to the market.” IP Ex. 1.5 at 5.

In construing a statute, courts are required to ascertain and give effect to the intent of the legislature. Faced with a question of statutory construction, courts should first look to the language of the statute to determine the intent of the drafters. When the statutory language is clear, no resort is necessary to other aids of construction.

Zekman v. Direct American Marketers, Inc., 182 Ill.2d 359, 368-69, 695 N.E.2d 853, 858 (Ill. 1998) (citations omitted).

The law is straightforward: a customer must be paying a transition charge before a utility can be required to let that customer obtain PPO service. And, equally straightforward is the notion that when no charge is due from a customer, then the customer is not paying a charge. It

is difficult to see how any person could read the statute otherwise. Nonetheless, apparently the IIEC has found a way to do so. On the stand, Mr. Stephens conjectured that even when no charge is assessed (because the TC calculation yields a value of 0) a customer could still be said to be paying a TC. Tr. 721-22 (10/03/00).²¹

The cardinal rule of interpreting statutes, to which all other canons and rules are subordinate, is to ascertain and give effect to the intent of the legislature. In determining legislative intent, a court first should consider the statutory language. *Moreover, a court will avoid an interpretation of a statute that would render any portion of it meaningless or void. Also, a court presumes that the legislature, in enacting a statute, did not intend absurdity, inconvenience, or injustice.*

McNamee v. Federated Equipment & Supply Co., 181 Ill.2d 415, 423-24, 692 N.E.2d 1157, 1161 (Ill. 1998) (emphasis added). The absurd reading posited by the IIEC does not make the statute ambiguous and should be rejected. Under the IIEC's reading (that a customer is paying all it has been asked to pay), even a utility that foregoes all transition charges (such as CILCO) should be required to make PPO available because its customers are paying all they have been asked to pay. Although not even the IIEC is willing to advance this reading of the statute (*compare* Tr. 722 (10/04/00)), it is difficult to see how the IIEC can avoid the absurd lengths to which their reading leads.

Furthermore, the IIEC's interpretation renders the phrase "that is paying transition charges" meaningless. If *all* non-residential customers (including those with 0 TCs) are paying transition charges, then the phrase is surplusage and meaningless. A more rational reading is that

²¹ He even went so far as to trivialize the importance of the TC by comparing it to a supermarket special being offered for free. *Id.* at 722.

the General Assembly meant to distinguish between those non-residential customers that are paying a transition charge from those who are not.²²

Nonetheless, even if the IIEC's absurd reading were given any credence and the statute could somehow be viewed as being ambiguous, the legislative intent belies the IIEC's position. "[W]here the language of a statute is ambiguous, it is appropriate to examine legislative history." *People vs. Rose*, 268 Ill.App.3d 174, 178, 643 N.E.2d 865, 868 (Ill. App. Ct. 4th Dist. 1994).

Thus, to the extent one finds the statutory language ambiguous, the intent nonetheless becomes clear given the history behind it. The record evidence on this point demonstrates that PPO service was not intended to be the primary vehicle for implementing competition in Illinois. IP Ex. 1.5 at 3. Yet, by attempting to broaden the class of customers eligible for PPO service, the IIEC seeks to turn PPO into exactly that. In doing so, the IIEC is attempting to upset the carefully crafted balance struck by the General Assembly in enacting the deregulation legislation. IP Ex. 1.5 at 5.

Furthermore, as a matter of public policy, the IIEC's position, if adopted, would hinder the development of competition in Illinois. It is telling that no marketer has supported the IIEC's position on this issue. The reason is obvious: the PPO represents an alternative to the service a marketer can offer and making that alternative more-widely available (and, with the NFF process, less costly) will not advance the ability of marketers to attract new customers. Furthermore, the corporate intervenors who comprise the IIEC are the same large corporations who were large enough and sophisticated enough to have been able to obtain a bargain even before the onset of

²² This distinction cannot be a temporal one related to the difference in availability PPO based on the time period during which a utility is entitled to collect TCs generally (2006 or 2008) and thereafter. The General Assembly drew that distinction elsewhere. *Compare* § 16-110(b) *with* § 16-110(c) & (d).

competition. The Commission need not be concerned that these customers will be unable to benefit now that competition is here.

Finally, with respect to those customers whose TC falls to zero when the market value is re-set, we note that this is already a potential problem under the NFF process (which updates market values every January 1). Furthermore, after the transition from NFF to MVI is complete, this ceases to be a problem under IPC's 12-month process because the customer uses the same market values for the entire 12-month period. And, during the transition, this is a relatively small problem because IPC uses the old NFF values until a customer's anniversary date occurs (except for those with anniversary dates prior to the implementation of Rider MVI, who will have their market values reset twice in 2002). Nonetheless, to the extent this remains an issue, because this issue is merely a variant of the more general issue of PPO eligibility, the same answer should obtain: the law and sound public policy mean that a utility cannot be required to continue offering PPO service if a customer's TC drops to zero.

The Commission should encourage competition, not advance ideas that retard it while rewarding only a small subset of customers who have already been historically advantaged.

C. Other—Reserved

Although at this time Illinois Power has no other issues to discuss, it reserves the right to reply to any additional issues raised by other parties in their opening briefs.

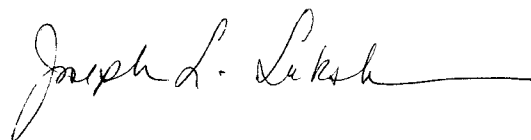
CONCLUSION

In sum, Illinois Power's MVI proposal (as amended by IPC's witnesses during the course of these proceedings) is just & reasonable and should be adopted by this Commission without further changes. From the outset, Illinois Power undertook a process of working with and listening to various parties. The goal was to shape a final tariff that balanced the interests of

many different parties and with which IP could be satisfied. We believe we have reached that point.

Our proposal is just & reasonable and a significant improvement over the NFF process. Our proposal is a pro-consumer step in the right direction at a time when the electric market will be opening up to all non-residential customers. Our proposal combines a market-basket of data sources for a liquid trading hub with a process that provides the appropriate price signals through-out the year. Although neither the Ameren nor the CE proposals contain all of the benefits of IPC's proposal, we do not object to the Commission adopting either of them for those respective companies.

Respectfully submitted,


A handwritten signature in cursive script, reading "Joseph L. Lakshmanan", followed by a horizontal line.

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Dated: November 3, 2000

CERTIFICATE OF SERVICE

I, Joseph L. Lakshmanan, certify that on the 3rd day of November, 2000, I served a copy of Illinois Power Company's Opening Brief by electronic mail and by first class mail, from Decatur, Illinois, postage prepaid to the individuals on the service list attached.



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